

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

FILED
SEP 28 2016
Clerk, U.S. District Court
District Of Montana
Missoula

SCOTT WOMBOLT,

Plaintiff,

vs.

MONTANA STATE PRISON &
EMPLOYEES LARRY BURKE, TODD
BOESE, CYNTHIA DAVENPORT, JILL
BUCK, KATHERINE FLYNN,
DOCTOR KOHUT, and CINDY HINER,

Defendants.

CV 15-060-H-DLC-JTJ

ORDER

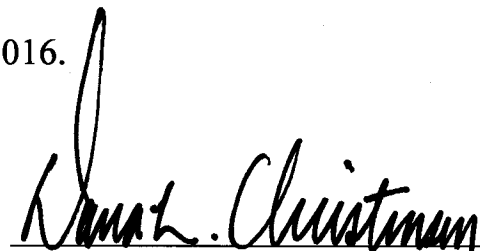
United States Magistrate Judge John T. Johnston entered findings and recommendations in this case on August 15, 2016, recommending dismissal of Plaintiff Scott Wombolt's ("Wombolt") case as to Defendants Larry Burke, Todd Boese, Cynthia Davenport, Jill Buck and Katherine Flynn, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Wombolt did not object to the findings and recommendations, and so has waived the right to de novo review thereof. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas*

Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Having reviewed the findings and recommendations, the Court finds no clear error in Judge Johnston’s consideration of Title II of the ADA and the applicable case law. This Court agrees that Title II of the ADA does not provide for individual capacity suits against state officials. *Vinson v. Thomas*, 288 F.3d 1145, 1156 (9th Cir. 2002). Consequently, Defendants Larry Burke, Todd Boese, Cynthia Davenport, Jill Buck and Katherine Flynn’s motion to dismiss is granted. The proper defendant in this case is the Montana State Prison.

Accordingly, IT IS ORDERED that Judge Lynch’s Findings and Recommendations (Doc. 26) are ADOPTED IN FULL. Defendants Larry Burke, Todd Boese, Cynthia Davenport, Jill Buck and Katherine Flynn’s Motion to Dismiss (Doc. 15) is GRANTED.

DATED this 28th day of September, 2016.



Dana L. Christensen, Chief Judge
United States District Court